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Attorneys for Defendant,
CITY OF REDLANDS and OFFICER KOAHOU

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUSTIN CODY HARPER,

Plaintiff(s),

v.

CITY OF REDLANDS, REDLANDS
POLICE DEPARTMENT, POLICE
OFFICER KOAHOU, and DOES 1-10,

Defendant(s).

Case No. 5:23-cv-00695-SSS-DTBx

*Honorable Sunshine Suzanne Sykes
Honorable Magistrate David T.
Bristow*

DEFENDANTS', CITY OF
REDLANDS AND OFFICER
KOAHOU, MOTION IN LIMINE
NO. 1 TO EXCLUDE ECONOMIC
CALCULATION OF DAMAGES
AND EXCLUDE ANY
ARGUMENT OF A SPECIFIC
DOLLAR AMOUNT FOR
DAMAGES; MEMORANDUM OF
POINTS AND AUTHORITIES;
AND DECLARATION OF JAMES
R. TOUCHSTONE

FPTC Date: April 4, 2025
Time: 1:00 p.m.
Dept: 2

NOTICE OF MOTION IN LIMINE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 4, 2025, at 1:00 p.m., at the Final Pretrial Conference, in Courtroom 2 of the above-entitled Court, located at 3470 12th Street, 2nd Floor, Courtroom 2, Riverside, California 92501, Defendants CITY OF REDLANDS AND OFFICER KOAHOU (hereinafter “Defendants”) will and hereby do move this Court for an order precluding Plaintiff JUSTIN CODY HARPER, (hereinafter “Plaintiff”), his counsel, or his witnesses from introducing any evidence and/or argument relating to their economic damages calculations. This evidence must be excluded because Plaintiff failed to make damages calculation disclosures as required under Federal Rule of Civil Procedure 26(a)(1), and Rule 37(c)(1) therefore requires exclusion of this evidence.

On February 14, 2025, counsel for Defendants City of Redlands and Officer Koahou, and counsel for Plaintiff, Renee V. Masongsong, Esq., timely met and conferred via Zoom to discuss the Motions in Limine each party intended to bring before trial. Additionally, counsel for Defendants followed the meet and confer conference with an email dated February 14, 2025, outlining the specific case law discussed. A true and correct copy of this email is attached to the Declaration of James R. Touchstone as Exhibit “A”.

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1 This Motion is based on the Memorandum of Points and Authorities, the
2 Declaration of James R. Touchstone, and on any other matters properly before the
3 Court.

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5 Respectfully Submitted,
6 Dated: March 7, 2025 JONES MAYER

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8 By: *s/ James R. Touchstone*
9 James R. Touchstone
10 Denise L. Rocawich
11 Attorneys for City of Redlands and
12 Officer Koahou
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants City of Redlands and Officer Koahou respectfully move the Court for an Order *in limine* precluding Plaintiff's counsel or Plaintiff's witnesses from introducing any testimony, documents, or other evidence or argument concerning economic damages or calculations. This evidence must be excluded because Plaintiff failed to make damages calculation disclosures as required under Federal Rule of Civil Procedure 26(a)(1), and Rule 37(c)(1) therefore requires exclusion of this evidence.

II. PLAINTIFFS' DISCLOSURES

Plaintiff served Initial Disclosures on the Defendants on July 17, 2024. In such Disclosures, Plaintiffs provided the following with regard to damages under Section II., DAMAGES:

"Plaintiff is seeking general and special compensatory damages, including but not limited to:

1. Medical Expenses;
2. Emotion Distress Damages;
3. Loss of Income;
4. Future Medical Costs;
5. Attorneys' Fees;
6. Punitive Damages against the individual defendants;
7. Costs"

A true and correct copy of Plaintiff's Initial Disclosures are attached to the Declaration of James R. Touchstone as Exhibit B.

Similarly, the Complaint in this matter requests compensatory, special and general damages "in a sum according to proof." See Docket Entry 1, Prayer for Relief.

Plaintiff has not supplemented his Initial Disclosures, has not provided any calculation as required by Rule 26, and has not produced any documents that support their claims. Decl. Touchstone at ¶ 4.

III. SPECIFIC EVIDENCE SOUGHT TO BE EXCLUDED

The specific evidence sought to be excluded is:

1. Any evidence submitted for the purpose of calculating Plaintiff's claimed economic damages.

IV. ANALYSIS

A. The Court has the Inherent Power to Hear and Determine Issues of Admissibility of Evidence Outside the Presence or Hearing of the Jury

While not expressly authorized by statute, motions in limine are commonly used trial tools that are entertained and granted within the trial court's inherent powers. Luce v. United States, 469 U.S. 38, 41 (1984); United States v. Komisamk, 885 F.2d 490, 492-95 (9th Cir. 2004). The underlying basis for motions in limine can be found in the Federal Rules of Evidence.

Rules 103(c) and 104(c) allow a court to hear and determine the question of the admissibility of evidence outside the presence or hearing of the jury. See FED. R. Evid. 103(c), 104(c); see also Daubert v. Merrel Dow Pharmaceuticals, Inc., 509 U.S. 579, 583-95 (1993) (before allowing scientific evidence to be admitted, the trial judge must make a preliminary finding that the evidence is reliable and relevant); United States v. Soulard, 730 F.2d 1292, 1297-98 (9th Cir. 1984) (trial court properly reviewed a summary chart outside of the jury's presence, before allowing it to be used at the trial).

Therefore, this Court has the inherent power to grant the instant motion.

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1 **B. Rule 37(C)(1) Requires Exclusion of the Evidence for Failure to**
2 **Comply With Rule 26**

3 Federal Rule of Civil Procedure 26(a)(1)(A)(iii) requires a plaintiff to provide,
4 as part of his initial disclosures, “a computation of each category of damages
5 claimed.” Failure to provide such calculations precludes a party from using any
6 evidence of those calculations at trial unless the failure to provide the information
7 was substantially justified or is harmless. *See* Fed. R. Civ. P. 37(c)(1). Courts
8 routinely enforce this rule by precluding a party from presenting evidence during trial
9 on economic damages calculations that were not disclosed. *See, e.g., Hoffman v.*
10 *Construction Protective Servs., Inc.*, 541 F.3d 1175, 1179-80 (9th Cir. 2008);
11 *Buffington v. Nestle Healthcare Nutrition Inc.*, No. SACV 18- 00106JVS, 2019 WL
12 6646703, at *2-*3 (C.D. Cal. Sep. 24, 2019). “Rule 26(e) creates an obligation for
13 parties to supplement the information disclosed under Rule 26(a) in a timely manner,
14 including its computation of damages. Fed. R. Civ. P. 26(e).” *Mort v. DeJoy*, 2022
15 WL 3229298 (E.D. Cal. 2022).

16 To satisfy Rule 26(a)(1)(A)(iii), a “plaintiff **should provide more than a**
17 **lump sum statement** of the damages allegedly sustained.” *City & County of San*
18 *Francisco v. Tutor-Saliba Corp.*, 218 F.R.D. 219, 221 (N.D. Cal. 2003) [emphasis
19 added]; *see also* *Mort v. Joy*, *supra* at *33-34; *see also* *First Nat’l Bank of Chicago*
20 *v. Ackerley Comm’ns, Inc.*, No. 94 Civ. 7539 (KTD), 2001 WL 15693, at *6 n.6
21 (S.D.N.Y. Jan. 8, 2001) [“A discovery request calling for the calculation of damages
22 requires more than merely setting forth the figure demanded”].

23 Here, Plaintiffs failed to provide calculations for their economic damages and
24 for their non-economic damages. To date, Plaintiffs have not provided any
25 calculation of any claimed economic damages during the course of this case. Such
26 vague, general assertions of a damages amount are insufficient to satisfy Rule
27 26(a)(1)(A)(iii). *See City & County of San Francisco*, 218 F.R.D. at 221; *First Nat’l*
28 *Bank of Chicago*, 2001 WL 15693, at *6 n.6.

1 **V. CONCLUSION**

2 For the foregoing reasons, the City of Redlands and Officer Koahou
3 respectfully move the Court for an Order *in limine* precluding Plaintiff, Plaintiff's
4 counsel or Plaintiff's witnesses from introducing any evidence and/or argument
5 relating to their economic damages or any calculations related thereto.

6 Respectfully Submitted,

7 Dated: March 7, 2025

JONES MAYER

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9 By: *s/ James R. Touchstone*

10 James R. Touchstone

11 Denise L. Rocawich

12 Attorneys for City of Redlands and
13 Officer Koahou
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DECLARATION OF JAMES R. TOUCHSTONE

I, James R. Touchstone, declare:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a partner in the law firm of Jones Mayer, counsel of record for Defendants in this action. This Declaration is submitted in support of Defendants' Motion in Limine No. 1. If called as a witness, I would and could competently testify to all of the facts contained within this declaration based upon my personal knowledge, unless so stated on information and belief.

2. On February 14, 2025, counsel for Defendants City of Redlands and Officer Koahou, James R. Touchstone and Denise Rocawich; and counsel for Plaintiff, Renee V. Masongsong, Esq., timely met and conferred via Zoom to discuss the Motions in Limine each party intended to bring before trial. The meet and confer process lasted approximately thirty-three minutes. The parties were unable to reach an agreement as to this Motion.

3. Additionally, Counsel for Defendants City of Redlands and Officer Koahou followed the meet and confer conference with an email dated February 14, 2025, outlining the specific case law discussed during the meet and confer conference. A true and correct copy of this email is attached hereto Exhibit "A."

3. Plaintiff served Initial Disclosures on the Defendants on July 17, 2024. In such Disclosures, Plaintiffs provided the following with regard to damages under Section II., DAMAGES:

"Plaintiff is seeking general and special compensatory damages, including but not limited to:

1. Medical Expenses;
2. Emotion Distress Damages;
3. Loss of Income;
4. Future Medical Costs;

1 5. Attorneys' Fees;

2 6. Punitive Damages against the individual defendants;

3 7. Costs"

4 4. Plaintiffs have not supplemented their Initial Disclosures, have
5 not provided any calculation as required by Rule 26 and have not produced
6 any documents that support their calculations for economic damages. A true
7 and correct copy of Plaintiff's Initial Disclosures is attached hereto as Exhibit
8 "B".

9 I declare under penalty of perjury under the laws of the United States that the
10 foregoing is true and correct. Executed this 7th day of March, 2025, at Fullerton,
11 California.

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13 /s/ James R. Touchstone

14 James R. Touchstone
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EXHIBIT A

Mary Kate Becerra

From: James R. Touchstone
Sent: Tuesday, March 4, 2025 10:51 AM
To: Mary Kate Becerra
Subject: FW: Harper: Confirming M&C Friday at 11:00 am.

From: Denise L. Rocawich <dlr@jones-mayer.com>
Sent: Friday, February 14, 2025 12:20 PM
To: rvalentine@galipolaw.com
Cc: James R. Touchstone <jrt@jones-mayer.com>
Subject: RE: Harper: Confirming M&C Friday at 11:00 am.

Hello Renee,

Below is the case law I mentioned re computation of damages:

Federal Rule of Civil Procedure 26(a)(1)(A)(iii) requires a plaintiff to provide, as part of his initial disclosures, "a computation of each category of damages claimed." Failure to provide such calculations precludes a party from using any evidence of those calculations at trial unless the failure to provide the information was substantially justified or harmless. See Fed. R. Civ. P. 37(c)(1). Courts routinely enforce this rule by precluding a party from presenting evidence during trial on economic damages calculations that were not disclosed. See, e.g., Hoffman v. Construction Protective Servs., Inc., 541 F.3d 1175, 1179-80 (9th Cir. 2008); Buffington v. Nestle Healthcare Nutrition Inc., No. SACV 18-00106JVS, 2019 WL 6646703, at *2-*3 (C.D. Cal. Sep. 24, 2019) [precluding testimony on lost wages when party failed to provide a calculation of those damages as required by Rule 26]. "Rule 26(e) creates an obligation for parties to supplement the information disclosed under Rule 26(a) in a timely manner, including its computation of damages. Fed. R. Civ. P. 26(e)." Mort v. DeJoy, 2022 WL 3229298 (E.D. Cal. 2022). To satisfy Rule 26(a)(1)(A)(iii), a "plaintiff **should provide more than a lump sum statement** of the damages allegedly sustained." City & County of San Francisco v. Tutor-Saliba Corp., 218 F.R.D. 219, 221 (N.D. Cal. 2003) [emphasis added]; see also Mort v. Joy, supra at *33-34. "[T]he 'computation' of damages required by Rule 26(a)(1)(C) contemplates some analysis; for instance, in a claim for lost wages, there should be some information relating to hours worked and pay rate." Id.; see also First Nat'l Bank of Chicago v. Ackerley Comm'ns, Inc., No. 94 Civ. 7539 (KTD), 2001 WL 15693, at *6 n.6 (S.D.N.Y. Jan. 8, 2001) ["A discovery request calling for the calculation of damages requires more than merely setting forth the figure demanded"].

With respect to noneconomic damages, such as pain and suffering or emotional distress, courts do not require the same level of precision to satisfy the Rule 26 initial disclosure obligation. Instead, a plaintiff has the option of not providing a damages calculation. But if a plaintiff does not provide a calculation for such non-economic damages, the plaintiff is precluded from arguing that the jury should award a specific damages amount. See, e.g., Sandoval v. Am. Bldg. Maintenance Indus., Inc., 267 F.R.D. 257, 282 (D. Minn. 2007) (citing cases); see also First v. Kia of El Cajon, No. 10-cv-536-DMS, 2010 WL 3069215, at *2 (S.D. Cal. Aug. 4, 2010) [not requiring plaintiff to provide calculation of emotional distress damages where plaintiff intended to let jury decide that question, but warning plaintiff "that if he is going to suggest a specific amount to the jury for emotional distress damages and fails to provide Defendant with a calculation of that amount as required by Rule 26(a)(1)(A)(iii), Plaintiff may be foreclosed from suggesting that specific amount for emotional distress damages to the jury at trial."]. "If Plaintiff intends to suggest a specific amount to the jury for emotional distress damages, yet fails...to provide Defendant with a computation of damages, Plaintiff may be foreclosed from suggesting that specific amount for emotional distress damages to the jury at trial." Benson v. Saban Cmty. Clinic, 2023 U.S. Dist. LEXIS 166739, *11-12 (C.D. Cal. 2023).

Thanks,



EXHIBIT B

1 LAW OFFICE OF SHARON J. BRUNNER
2 Sharon J. Brunner, Esq. (SBN: 229931)
3 Email: sharonjbrunner@yahoo.com
4 14393 Park Avenue, Suite 100
5 Victorville, CA 92392
6 Tel: (760) 243-9997
7 Fax: (760) 843-8155

8 LAW OFFICE OF JAMES S. TERRELL
9 James S. Terrell, Esq. (SBN: 170409)
10 Email: jim@talktoterrell.com
11 15411 Anacapa Road
12 Victorville, CA 92392
13 Tel: (760) 951-5850
14 Fax: (760) 952-1085

15 Attorneys for Plaintiff

16 **UNITED STATES DISTRICT COURT FOR THE**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 JUSTIN CODY HARPER,
19 Plaintiff,

20 vs.

21 CITY OF REDLANDS, REDLANDS
22 POLICE DEPARTMENT, POLICE
23 OFFICER KOAHOU, and DOES 1
24 through 10, Inclusive

CASE NO. 5:23-cv-00695-SSS-DTB

25 **PLAINTIFF'S INITIAL**
26 **DISCLOSURES**
[FED.R.CIV.P. 26(a)(1)]

*Assigned for all purposes to: Hon.
Gary R. Klausner, Courtroom 850*

27 Pursuant to Local Rule 26-1 and Federal Rule of Civil Procedure 26, Plaintiff hereby
28 makes the following initial disclosures of witnesses, documents, and damages known at
29 this time.

30 **I. WITNESSES AND DOCUMENTS:**

31 Plaintiff states that, based on the information currently known to him, at least the
32 following persons have knowledge of facts that Plaintiff may use to support his material
33 allegations. The subjects of information specified are those of which Plaintiff is

1 currently aware or Plaintiff reasonably believes is within the knowledge of the
2 identified individuals.

- 3 1. Unknown neighbors that may be material witnesses.
- 4 2. Plaintiff Justin Harper is a material to witness.
- 5 3. Defendant Officer Koahu is a material witness to the incident.
- 6 4. Unknown Officers at the scene of the incident who may have witnessed the
7 incident.
- 8 5. Unknown paramedics on site or called to assist with the injuries of the Plaintiff.
- 9 6. Unknown Medical personnel at Loma Linda that may have knowledge of
10 Plaintiff's injuries.
- 11 7. Plaintiff is providing criminal discovery. (Plaintiff's Initial Disclosure Bate
12 Stamped PL.000001-PL.000038)
- 13 8. Plaintiff is providing Loma Linda medical records. (PL.000039-PL.P000713)

14
15 Plaintiff's investigation of this matter is not yet complete, and Plaintiff has not
16 concluded his discovery in this matter. Plaintiff reserve the right to identify additional
17 individuals with such knowledge as such persons become known to Plaintiff, or the
18 information they possess becomes relevant to the claims or defenses of any party,
19 pursuant to Rule 26(c).

20 The documents above are being produced concurrently herewith. Plaintiff's
21 investigation of this matter is not yet complete, and Plaintiff has not concluded their
22 discovery in this matter. Plaintiff reserves the rights to identify additional documents
23 and categories of documents as they become known to Plaintiff or they become relevant
24 to the claims or defenses of any party, pursuant to Rule 26(c).

25 **II. DAMAGES**

26

1 Plaintiff is seeking general and special compensatory damages, including but not
2 limited to:

- 3 1. Medical Expenses;
4 2. Emotional Distress Damages;
5 3. Loss of income;
6 4. Future Medical Costs
7 5. Attorneys' Fees;
8 6. Punitive Damages against the individual defendants;
9 7. Costs.

10 Plaintiff's investigation of this matter is not yet complete, and Plaintiff has not
11 concluded their discovery in this matter. Plaintiff reserves the right to supplement or
12 amend their prayer for relief and nature and scope of damages, pursuant to Rule 26(c).

13 Counsel for Plaintiff certify that, to the best of their knowledge, information
14 and belief, formed after an inquiry that is reasonable under the circumstances, this
15 disclosure is correct as of the date indicated below; however, counsel reserved the
16 right to supplement or amend this disclosure as additional information becomes
17 available, and/or known, through discovery or otherwise.

18 Respectfully Submitted,
19

20 DATED: April 9, 2024

LAW OFFICE OF SHARON J. BRUNNER
LAW OFFICE OF JAMES S. TERRELL

21
22
23 By /s/Sharon J. brunner

24 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California and am over the age of eighteen years and not a party to the within action. My business address is 15411 Anacapa Road, Victorville, CA 92392.

On July 17, 2024, I served the foregoing document described as

PLAINTIFF'S RULE 26 INITIAL DISCLOSURES

on all interested parties, through their respective attorneys of record in this action by placing a true copy thereof enclosed in a sealed envelope addressed as indicated on the attached service list.

METHOD OF SERVICE

☒ (BY MAIL) I caused such envelope(s) fully prepaid to be placed in the United States mail at Victorville, California. I am "readily familiar" with the firm's practice of collection and processing correspondence or mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Victorville, California, in the ordinary course of business. I am aware that on motion of the party service, service is presumed invalid if postage cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the offices of the addressee(s).

☐ (BY FACSIMILE) I caused such document(s) to be telephonically transmitted to the offices of the addressee(s).

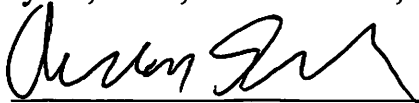
X (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission. I caused the documents to be sent to the persons at the electronic notification addresses listed above.

JURISDICTION

☐ (State) I declare under penalty of perjury that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 17, 2024, at Victorville, California.



Austin Terrell

SERVICE LIST

Harper v. City of Redlands et al.
Case No: 2:22-CV-02340-RGK-PVC

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